

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Sections 11)
and 13 of the Cable Television)
Consumer Protection and)
Competition Act of 1992)

MM Docket No. 92-264

Horizontal and Vertical Ownership)
Limits, Cross-Ownership)
Limitations and Anti-trafficking)
Provisions)

To: The Commission

COMMENTS OF COALITION OF SMALL SYSTEM OPERATORS

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COMMENTS OF COALITION OF SMALL SYSTEM OPERATORS

On behalf of the Coalition of Small System Operators, 1/ we hereby submit the following comments in response to the Notice of Proposed Rulemaking in the captioned proceeding (the "NPRM").

The Small System Operators operate cable television systems primarily serving small, rural communities which otherwise would not have

1/ The Coalition of Small System Operators includes: Midcontinent Media, Inc., Galaxy Cablevision, Vantage Cable, Classic Cable, USA/MW1 Cablesystems, Inc., Buford Television, Inc., Triax Communications Corp., Douglas Communications Corp., II, Leonard Communications, Inc., Phoenix Cable, Inc. and Star Cable Associates. The Coalition, which has participated in other rulemaking proceedings related to the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"), continues to expand. Therefore, the numbers of subscribers, systems, etc. served by these operators may be different than those supplied previously.

cable service because large system operators generally avoid these sparsely populated areas. Together, the Small System Operators operate a total of 2,011 systems serving 880,391 subscribers in more than 30 states. Many of the Small System Operators have hundreds of community units and franchise agreements. The vast majority of these systems serve fewer than 1,000 subscribers. In fact, approximately 76 percent of the systems serve fewer than 500 subscribers, and the average system with fewer than 1,000 subscribers serves only 286 subscribers.

By the nature of their widely scattered systems, the Small System Operators are saddled with enormous administrative burdens. They must negotiate, track and abide by hundreds of different franchise agreements. They must deal with franchise authorities of all different forms and sizes, many of which are comprised of individuals with full-time jobs and little background in cable television regulation. Large operators, of course, tend to have franchise agreements in more densely populated areas, so that their ratio of franchise agreements to subscribers is much lower than that of the Small System Operators, making it much easier for large systems to recover the per subscriber cost of dealing with franchise authorities.

I. SMALL SYSTEMS SHOULD RECEIVE A BLANKET WAIVER OF THE ANTI-TRAFFICKING RULES

The Small System Operators request that the Commission grant a blanket waiver to small systems (i.e. those with fewer than 1,000 subscribers) from the three-year holding period requirement of the anti-trafficking rules and the related certification requirement. Small systems should not be subject to the three-year holding period requirement because the economics of small system operation are such that denying an operator

the ability to readily sell a system could affect its ability to obtain financing for the system, and it could also drive the operator out of business in the end. The procedural requirement that operators provide to all franchise authorities certification of compliance with anti-trafficking rules prior to selling any system (or systems) would also impose a tremendous burden on small systems which may be subject to regulation by hundreds of franchise authorities.

Flexibility in the application of the three-year holding rule poses little danger that trafficking will drive up subscriber costs because trafficking in small cable systems is not a problem. The marginal profits, if any, earned by very small systems with less than 1,000 subscribers, and the substantial debt which most of them carry make small systems undesirable targets for speculators. Some level of trafficking in small systems occurred during the 1980s, when lenders were willing to provide funds to speculators based on high debt to equity ratios, which were acceptable then because even small systems could almost always be resold at a profit. However, due to an overall decline in the economy, many of the speculators who bought leveraged small systems during the 1980s with the notion of selling them at a profit ultimately sold them at cost or even at a loss to the only buyers interested in owning these highly-leveraged, unprofitable small systems: those in the business of providing cable service over the long-term. Thus, the current danger that trafficking poses is not great, but as explained below, the harm that could result from the rigid application of the three-year rule to small operators is substantial.

In view of the financial fragility of many of these small systems, they must retain flexibility to control the timing of the sale of their systems. Because many small systems are highly leveraged, cash flow is critically

important to their continued survival. 2/ In order to obtain a needed cash infusion, or to eliminate an area which produces excessive losses, a small system operator should be permitted to sell any of its systems at any time. For example, if a given small system is losing money and the small operator cannot continue to operate it, the operator should have the option to sell the system to an entity which can continue to provide cable service, rather than shutting the system down. Also, if an opportunity to expand a given system arises, but the small operator does not have the funds to undertake the project, the small system operator should be permitted to raise cash by selling one or more of its systems in order to take advantage of the business opportunity and bring cable service to new subscribers.

Small system operators often aggregate their systems in a given area by purchasing systems from nearby operators or constructing new systems in the same area. There are some economies of scale inherent in this practice, which allow small operators to bring new service to subscribers who might not otherwise have any cable service. Small operators should not be discouraged from pursuing this type of expansion of rural coverage. Nor should they be denied the value of the economies of this type of expansion upon sale by virtue of the three-year holding period restriction. The practice of aggregating small systems into clusters provides operating efficiencies -- and therefore, lower costs -- which may be passed along to subscribers. A blanket waiver for systems with fewer than 1,000 subscribers in this context

2/ Most of the Small System Operators' systems with fewer than 1,000 subscribers do not operate at a profit. Instead, they generate cash flow to service their debt and to cover other operating costs.

is consistent with Congressional recognition that small systems must be accorded special treatment. 47 U.S.C. § 543(i).

Another common practice for small system operators -- the acquisition of multiple systems, some of which must be immediately resold in order to benefit from operating efficiencies -- also provides support for a blanket small system waiver. One Small System Operator recently purchased systems served by 73 headends. Of these headends, 70 complemented the Small System Operator's existing operations by virtue of their geographical location, technical facilities, employees, etc. Three of the headends, however, were located quite far away from the Operator's existing facilities. The Small System Operator immediately re-sold these three headends to a cable operator serving a city near the three headends, a transaction which benefited all parties. The Small System Operator was able to divest three isolated headends where it had no offices, employees or other reason to operate. The subscribers of these three headends benefited because they are now served by an operator with facilities and personnel to serve them efficiently. And the ultimate purchaser of the three systems benefited because of the efficiencies of system clustering. If the three-year rule prohibits this type of "reshuffling" after a multiple system acquisition, it will be to the detriment of subscribers of small systems, who will suffer from lost efficiencies.

It is clear that the Commission has authority to approve waivers of the three-year holding period rule. In fact, Congress expressly recognized the Commission's discretion to grant waivers of the rule. 3/ In order to fully

3/ 47 U.S.C. § 537(d).

achieve the purposes for which waiver is sought here, a blanket waiver is the most appropriate vehicle. To require small system operators to seek waiver on a case-by-case basis would defeat one of the key reasons behind this waiver request, which is to reduce administrative burdens on small systems with fewer than 1,000 subscribers, a goal supported by Congress. 4/

The notion of a blanket waiver is not unprecedented. Indeed, the Commission's rules contain a built-in blanket waiver provision in order to permit telephone companies to own cable television systems in communities with less than 2,500 inhabitants. 5/ It is significant that this existing built-in blanket waiver provision promotes the same goal shared by the Small System Operators in seeking blanket waiver of the three-year holding period rule: to facilitate and promote cable service to sparsely populated, rural areas.

II. CALCULATION OF THREE-YEAR HOLDING PERIOD MUST BE REALISTIC

The three-year holding period for a given new system should begin with activation of the system's headend. For a purchased system, the term should run from the date of consummation of the transaction. Furthermore, for systems with multiple franchises, the three-year term should be calculated from the date the first headend was activated in the first franchise area. If the three-year term were not calculated from the date of activation of a system's first headend, the rule would have the perverse effect of discouraging operators from building line extensions or adding new

4/ 47 U.S.C. § 548(i).

5/ 47 C.F.R. § 63.58(a).

franchises because to do so would prevent the entire system from being sold for three years. Indeed, many small system operators would be well advised to stop adding to existing groups of systems immediately in order to insure their ability to sell all (or any group of) their systems within three years.

When applied to the sale of more than one system at a time, the three-year holding period should be deemed to be satisfied so long as the majority of the operator's systems being sold have been held for at least three years. Otherwise, multiple system operators would have to cease all construction and acquisitions of systems three years in advance of a planned sale. It was clearly not Congress' intent to discourage cable operators from extending service to new areas by imposing a three-year moratorium on expansion each time an operator planned to sell some systems.

Nevertheless, this would be the result of the law if the Commission requires that every single system in a multiple-system transaction satisfy the three-year holding period requirement.

Application of the three-year holding period rule to all systems in a given transaction would also effectively prevent any multiple system operator from getting out of the cable television business. This is especially the case for small operators, whose systems in a given area often expand by accretion over a period of time. Unless a multiple system operator has held every single one of its systems for at least three years, it will not be able to sell all systems at once. This poses not only a business problem, but also a borrowing problem. Lenders which may demand payment in full on loan obligations before releasing any collateral to a new buyer, will be able to prevent the sale of any systems (even ones held for three years) if the sale involves systems that provide collateral to the lender. Moreover, it is unlikely that all bank loans will be completely repaid at the time of sale

unless all systems are sold simultaneously -- a difficult proposition in view of the three-year rule.

III. THE COMMISSION SHOULD DEVELOP A SPECIAL WAIVER FOR SYSTEMS CONSTRUCTED PURSUANT TO "TURNKEY" AGREEMENTS

Many of the Small System Operators cannot afford to construct new systems or line extensions by themselves. Instead, it is common practice for a contractor to build a system or line extension and then, upon completion, sell the newly constructed facilities to the small system operator. This enables small system operators to control their capital expenditures. The contractor in the "turnkey" arrangement is not a cable operator and would have no knowledge of how to operate a new system for the duration of the required three-year holding period. Without a blanket waiver of the three-year holding rule for this type of "turnkey" arrangement, small system operators will lose one of the primary means they have to expand their rural systems in an affordable manner.

IV. IF SMALL SYSTEM OPERATORS DO NOT RECEIVE A BLANKET WAIVER OF THE ANTI-TRAFFICKING RULES, THEN THE FCC SHOULD ADMINISTER THE RULES

If there is not a blanket waiver of the three-year holding period rule for small systems, then the FCC and not local franchise authorities should have jurisdiction over enforcement of the rule. As stated above, for a small system operator with hundreds of franchise agreements, the administrative burden of seeking approval of a multi-system sale from hundreds of franchise authorities would unfairly punish systems serving groups of rural communities. On the other hand, if the FCC were to

administer the rule, the centralization of enforcement power would substantially reduce administrative burdens for small operators and, at the same time, insure that the rule is applied uniformly.

The FCC has authority under the Act to administer the three-year rule. The Act does not expressly state whether franchise authorities or the Commission should enforce the Commission's anti-trafficking rules. The Commission has proposed that anti-trafficking rules be enforced by local franchise authorities. ^{6/} As the Small System Operators have demonstrated above, because of their many small franchises, the administrative burden of dealing with numerous franchise authorities to satisfy anti-trafficking rules would be substantial. Therefore, for small systems, the Commission's stated concern for efficiency would be much better served if the Commission, and not local authorities, enforces anti-trafficking rules.

V. CONCLUSION


Small systems (serving less than 1,000 subscribers) should receive blanket waiver of the anti-trafficking rules because of the great burden that the substantive and procedural requirements of the rule would impose on small systems. If small systems are not excused from the anti-trafficking rules, then the rules should be applied so as to minimize the

^{6/} NPRM at ¶ 8.

adverse impact on small systems, with liberal waiver standards and centralized administration of the rules at the FCC.

Respectfully submitted,

COALITION OF SMALL SYSTEM
OPERATORS

By 

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NAME OF OPERATOR	TOTAL # OF SUBSCRIBERS	TOTAL # OF COMMUNITY UNITS	TOTAL # OF STATES SERVED	TOTAL # OF HEADENDS	# OF HEADENDS WITH LESS THAN 1,000 SUBSCRIBERS
Douglas Communications Corp. II	103,090	494	13	437	428
Galaxy Cablevision	54,887	200	6	129	112
MW1/USA Cablesystems, Inc.	37,334	484	16	443	443
Vantage Cable Associates, L.P.	30,737	126	7	126	123
Triax Communications Corp.	326,052	1,075	16	444	361
Buford Television, Inc.	77,206	260	8	168	154
Classic Cable	29,904	78	5	73	65
Midcontinent Media, Inc.	72,502	174	4	170	162
Star Cable Associates	60,279	150	6	62	33
Leonard Communications, Inc.	61,500	226	9	125	110
Phoenix Cable, Inc.	26,900	58	8	37	25

FOR SYSTEMS WITH FEWER THAN 1,000 SUBSCRIBERS

NAME OF OPERATOR	AVERAGE # OF SUBSCRIBERS	AVERAGE # OF HOMES PASSED PER MILE	AVERAGE # OF MILES OF PLANT	AVERAGE # OF ACTIVATED CHANNELS	AVERAGE # OF SUBSCRIBERS PER MILE	AVERAGE PENETRATION
Douglas Comm. Corp. II	191	40	8	16	24	60%
Galaxy Cablevision	396	37	19	28	20	54%
MW1/USA Cable Systems, Inc.	84	29	7	21	12	41.3%
Vantage Cable Associates, L.P.	221	45	7.23	21	30	66%
Triax Comm. Corp.	364	39	15	22	25	44%
Buford Television, Inc.	322	24	29	24	11	45.83%
Classic Cable	331	51	10	25	39	76.4%
Midcontinent Media, Inc.	240	57	5.85	16	41	72%
Star Cable Associates	429	28	32	26	13.4	47.8%
Leonard Comm., Inc.	252	40	9.6	19.9	26	65%
Phoenix Cable, Inc.	313	24.4	24.6	18	12.7	52%